

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 3:07CR154-P-A

ALI TAHER OBAD,

DEFENDANT.

ORDER

This matter comes before the court upon Defendant Ali Taher Obad's motion for a hearing pursuant to *U.S. v. James*, 590 F.2d 575 (5th Cir. 1979) [107]. After due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

The motion should be denied insofar as it seeks a separate *James* hearing outside the presence of the jury prior to trial to determine whether statements by a coconspirator are admissible. As the Fifth Circuit noted in *U.S. v. Fragaso*, 978 F.2d 896, 899 (5th Cir. 1992), the Supreme Court in *Bourjaily v. United States*, 483 U.S. 171 (1987) "the court need not hold a *James* hearing outside the jury's presence." In fact, the Fifth Circuit in *Fragaso* observed that "*James* has never required a hearing outside the presence of the jury." *Id.* at 899. The decision in "*Bourjaily* 'swept' away a major portion of our *James* decision." *Id.* at 899.

However, during trial, the court recognizes that it must "whenever reasonably practical, require the showing of a conspiracy and of the connection of the defendant with it [pursuant to Federal Rule of Evidence 801(d)(2)(E)] before admitting declarations of a coconspirator." *Fragaso*, 978 F.2d at 900. In complying with Rule 801(d)(2)(E), the court must determine whether there is sufficient "evidence that there was a conspiracy involving the declarant and the nonoffering party, and that the statement was made 'during the course and in furtherance of the conspiracy.'" *Id.* at 899

(quoting *Bourjaily*, 483 U.S. at 175).

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Ali Taher Obad's motion for a hearing pursuant to *U.S. v. James*, 590 F.2d 575 (5th Cir. 1979) [107] is **DENIED** as explained above.

SO ORDERED this the 9th day of October, A.D., 2008.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE